

***Permanent Mission of Brazil to the United Nations in Geneva***

**Human Rights Council**

**Open Ended Working Group on the elaboration of a international legally binding instrument on transnational corporations and other business enterprises with respect to human rights – OEIGWG – 5th session**

**October 14th 2019**

Mr. President,

Brazil is pleased to participate in this 5th session of the Open Ended Working Group on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights.

We congratulate Ambassador Emilio Rafael Izquierdo Miño for his election as the chair of the Working Group and we thank the delegation of Ecuador for presenting a revised draft of a legally binding instrument.

Brazil remains committed to filling existing gaps in international normative framework regarding the protection of victims of human rights violations and abuses in the context of business activities. In this regard, the UN Guiding Principles on Business and Human Rights, consensually adopted by the Human Rights Council, should be the substantive entry point for all our discussions.

We have analyzed very carefully the draft proposal prepared by the Presidency. Without precluding further comments on specific articles, we would like to praise the efforts made by the Presidency in order to harmonize the content of the draft with the language and spirit of the UNGPs. We particularly commend the revision of the scope, which now encompasses all business enterprises, regardless of size, sector, location, ownership and structure, in accordance with the consensual language of the UNGPs.

We reiterate our view that broadening the scope serves better our shared goal of enhancing the prospects of victims of human rights violations and abuses in their quest for access to justice and to proper reparations. Limiting the scope of the instrument to transnational activities or companies, on the contrary, would create protection gaps and render implementation ineffective in too many occasions.

The draft instrument addresses also crucial areas such as prevention, jurisdiction, judicial cooperation and technical assistance. In this sense, Brazil reaffirms its view that states hold the primary responsibility under international law for the promotion and protection of human rights. It is incumbent upon governments to exercise due diligence in order to prevent and punish violations and abuses of human rights, and ensure accountability and remedies when appropriate.

In addition, we would like to further clarify the definition of victims. The proposed language does not adequately differentiate between victims and alleged victims, which may induce uncertainty and even hamper the enforcement of judicial or administrative decisions favorable to victims of violations and abuses. We will provide further comments on the matter during the discussions about the specific contents of the draft.

Given the complexity of the issues raised in the draft and the potential impact on the activities of business enterprises, Brazil believes that we must proceed with caution in our deliberations, building consensus and bridging gaps to reach a common understanding.

Brazil is convinced that the current session can contribute to promote convergence and clarify substantive issues that are of special concern to negotiating parties. There is a long road ahead.

While upholding the highest values and standards, an effective legally binding instrument needs to be mindful of constraints. To attribute excessive burden upon states would prove unrealistic and counterproductive.

We encourage the Presidency to ensure a States-driven debate, which will enshrine direct substantive intergovernmental negotiations on the draft before us, in a transparent, collaborative and inclusive manner.

We reaffirm our readiness to continue engaging constructively with member states and civil society with a view to reaching a victims-oriented, balanced and effective document that properly fills the existing protection gaps against human rights violations and abuses in the context of business activities.

I thank you.

(575 words)